

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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BNP PARIBAS MORTGAGE
CORPORATION

Plaintiff,

Civil Action No. 09-cv-9783-RWS

-against-

BANK OF AMERICA, N.A.,

Defendant.

-----X

-----X

DEUTSCHE BANK, AG,

Plaintiff,

Civil Action No. 09-cv-9784-RWS

-against-

BANK OF AMERICA, N.A.,

Defendant.

-----X

**DECLARATION OF RICHARD ST. JOHN IN SUPPORT OF
BANK OF AMERICA'S MOTIONS TO DISMISS
(WITH EXHIBITS)**

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DECLARATION OF RICHARD ST. JOHN IN SUPPORT OF
BANK OF AMERICA'S MOTIONS TO DISMISS

I, RICHARD ST. JOHN, hereby declare:

1. I am a member of the firm Munger, Tolles & Olson LLP, lead counsel for Bank of America, N.A., the defendant herein. I am admitted to practice law in the States of New York and California and before this Court. I submit this declaration in support of Bank of America N.A.'s Motions to Dismiss the Complaints filed in the above actions. If called upon as a witness, I could and would testify as to the facts stated in this declaration.

2. Security Agreement. Attached hereto as **Exhibit A** is a true and correct copy of a document produced by Taylor, Bean & Whitaker Mortgage Corp. ("TBW") entitled Second

Amended and Restated Security Agreement, dated as of June 30, 2008, between Ocala Funding, LLC; LaSalle Bank National Association, as Indenture Trustee; and LaSalle Bank National Association, as Collateral Agent. (The bar code cover sheet on this exhibit and other exhibits attached to this Declaration was included as produced by TBW.) This document is referred to in Bank of America's Memorandum in Support of the Motions to Dismiss ("Memorandum") as the "**Security Agreement**" or "**Exhibit A.**" This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of "Facility Documents," *see* Indenture, Schedule I, (Exhibit F2 herein), at pp. 12-13, and is one of the agreements upon which Deutsche Bank, A.G. ("Deutsche" or "DB") and BNP Paribas Mortgage Corp. ("BNP") sue herein. *See, e.g.*, DB Compl. Count I (¶¶ 133-42), ¶ 158; BNP Compl. Second Cause of Action (¶¶ 123-29), ¶ 131.

3. Depository Agreement (Deutsche). Attached hereto as **Exhibit B** is a true and correct copy of a document produced by TBW entitled Series 2008-1 Depository Agreement, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Depository. This document is referred to in the Memorandum as a "**Depository Agreement**" or "**Exhibit B.**" The Series 2008-1 Depository Agreement relates specifically to the 2008-1 Series of Notes purchased by Deutsche. *See* DB Compl. ¶¶ 32, 38(e). This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of "Facility Documents," *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which Deutsche sues herein. *See, e.g.*, DB Compl. Count II (¶¶ 143-48), ¶ 158.

4. Depository Agreement (BNP). Attached hereto as **Exhibit C** is a true and correct copy of a document produced by TBW entitled Series 2005-1 Amended and Restated Depository Agreement, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Depository. This document is referred to in the Memorandum as a "**Depository**

Agreement” or “**Exhibit C.**” The Series 2005-1 Depositary Agreement relates specifically to the 2005-1 Series of Notes purchased by BNP. *See* BNP Compl. ¶¶ 31-33, 45. This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which BNP sues herein. *See, e.g.,* BNP Compl. First Cause of Action (¶¶ 114-22).

5. Custodial Agreement. Attached hereto as **Exhibit D** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Custodial Agreement, dated June 30, 2008, between Ocala Funding, LLC, as Issuer; Taylor, Bean & Whitaker Mortgage Corp., as Seller and Servicer; LaSalle Bank National Association, as Custodian; and LaSalle Bank National Association, as Collateral Agent. This document is referred to in the Memorandum as the “**Custodial Agreement**” or “**Exhibit D.**” This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, and is one of the agreements upon which Deutsche and BNP sue herein. *See, e.g.,* DB Compl. Count III (¶¶ 149-56), ¶ 158; BNP Compl. ¶ 131.

6. March 27, 2009 Letter. Attached hereto as **Exhibit E** is a true and correct copy of a letter, dated March 27, 2009, from Bank of America, N.A. to BNP Paribas, that I believe to be the letter referred to in Deutsche’s Complaint at paragraph 108, and the letter referred to in BNP’s Complaint as the “March Letter Agreement,” *see, e.g.,* BNP Compl. ¶ 5. This document is referred to in the Memorandum as the “**March 2009 Letter**” or “**Exhibit E.**” This is one of the documents upon which BNP sues herein. *See* BNP Compl. First Cause of Action (¶¶ 114-22), ¶ 132.

7. Base Indenture. Attached hereto as **Exhibit F** are true and correct copies of documents produced by TBW entitled, respectively: **(1)** Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC and LaSalle Bank National Association, as Indenture Trustee; and **(2)** Schedule I to the Base Indenture, Definitions List. These documents are referred to cumulatively in the Memorandum as the “**Base Indenture**” or “**Exhibit F**.” When Schedule I to the Base Indenture, Definitions List is cited specifically, it is referred to as “**Schedule I**” or “**Exhibit F2**.” These documents comprise parts of the “Indenture” and are among the governing documents for the Ocala Funding facility encompassed within the definition of “Facility Documents.” *See* Indenture, Schedule I, at pp. 12-13, 15; *see also* Exhibit F1 § 1.1. The Base Indenture is referred to in DB’s and BNP’s Complaints. *See, e.g.*, DB Compl. ¶¶ 38(d), 38(e), 44(c), 64, 122, 139(a), 145; BNP Compl. ¶¶ 38, 51, 52.

8. Indenture Supplement (Deutsche). Attached hereto as **Exhibit G** is a true and correct copy of a document produced by TBW entitled Series 2008-1 Supplement to the Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC, as Issuer, and LaSalle Bank National Association, as Indenture Trustee and Paying Agent. The Series 2008-1 Supplement relates to the 2008-1 Series of Notes purchased by Deutsche, and is referred to in Deutsche’s Complaint. *See, e.g.*, DB Compl. ¶¶ 38(d), 44(c), 44(e). This document comprises part of the “Indenture” and is among the governing documents for the Ocala Funding facility encompassed within the definition of “Facility Documents.” *See* Indenture, Schedule I, at pp. 12-13, 15, 38, 42. References in the Memorandum to the “**Indenture**,” cumulatively refer to the Base Indenture (Exhibit F), this document, and Exhibit H (described below).

9. Indenture Supplement (BNP). Attached hereto as **Exhibit H** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Series 2005-1

Supplement to the Second Amended and Restated Base Indenture, dated as of June 30, 2008, between Ocala Funding, LLC, as Issuer, and LaSalle Bank National Association, as Indenture Trustee and Paying Agent. The Series 2005-1 Supplement relates to the 2005-1 Series of Notes purchased by BNP, and is referred to in BNP's Complaint as the "Indenture Supplement." *See, e.g.*, BNP Compl. ¶¶ 51, 53, 63. This document comprises part of the "Indenture" and is among the governing documents for the Ocala Funding facility encompassed within the definition of "Facility Documents." *See* Indenture, Schedule I, at pp. 12-13, 15, 35, 42. References in the Memorandum to the "**Indenture**," cumulatively refer to the Base Indenture (Exhibit F), Exhibit G, and this document.

10. Purchase Agreement. Attached hereto as **Exhibit I** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement, dated as of June 30, 2008, between Ocala Funding, LLC, as Purchaser, and Taylor, Bean & Whitaker Mortgage Corp., as Seller and Servicer. This document is referred to in the Memorandum as the "**Purchase Agreement**" or "**Exhibit I.**" This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of "Facility Documents," *see* Indenture, Schedule I, at pp. 12-13, and is referred to in both Complaints. *See, e.g.*, DB Compl. ¶¶ 38(a), 55; BNP Compl. ¶ 62.

11. Short Term Note Dealer Agreement. Attached hereto as **Exhibit J** is a true and correct copy of a document produced by TBW entitled Short Term Note Dealer Agreement, dated as of April 5, 2005, between Ocala Funding, LLC, the Issuer; Taylor, Bean & Whitaker Mortgage Corp.; and the Short Term Note Dealers: Lehman Brothers Inc., and BNP Paribas Securities Corp. This document is referred to in the Memorandum as the "**Short Term Note Dealer Agreement**" or "**Exhibit J.**" This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of "Facility Documents,"

see Indenture, Schedule I, at pp. 12-13, and, *inter alia*, appoints BNP Paribas Securities Corp. as a Short Term Note Dealer. *See* Exhibit J at p. 1.

12. Subscription and Purchase Agreement. Attached hereto as **Exhibit K** is a true and correct copy of a document produced by TBW entitled Subscription and Purchase Agreement for Short Term Notes, dated as of June 30, 2008. This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents.” *See* Indenture, Schedule I, at pp. 12-13, 42.

13. Private Placement Memorandum. Attached hereto as **Exhibit L** is a true and correct copy of a document produced by TBW entitled Private Placement Memorandum, Ocala Funding, LLC, and dated June 2008. This document is referred to in the Memorandum as “**Private Placement Memorandum**,” “**PPM**,” and “**Exhibit L**.” This document, *inter alia*, identifies Deutsche Bank Securities, Inc. and BNP Paribas Securities Corp. as the “placement agents” and “Note Dealers” for the Short Term Notes. *See* Exhibit L at pp. 78, 79. The Private Placement Memorandum is referenced in the Short Term Note Dealer Agreement, which, as noted above, is among the governing documents for the Ocala Funding facility encompassed within the definition of “Facility Documents.” *See* ¶ 11, *supra*. Among other things, the Short Term Note Dealer Agreement authorizes the Short Term Note Dealers to “distribute . . . the Private Placement Memorandum to prospective purchasers of the Short Term Notes.” *See* Exhibit J at p. 4.

14. Front Swap (Deutsche). Attached hereto as **Exhibit M** is a true and correct copy of a document produced by TBW entitled **(1)** ISDA Master Agreement, dated as of June 30, 2008, between Deutsche Bank, AG, London Branch and Ocala Funding, LLC. As collated herein, this Exhibit also includes **(2)** the Schedule to the Master Agreement, dated as of June 30, 2008, between Deutsche Bank, AG, London Branch and Ocala Funding, LLC (“Schedule”); and

(3) the Confirmation, dated June 30, 2008, to Ocala Funding, LLC from Deutsche Bank, AG, London Branch (“Confirmation”); both the Schedule and the Confirmation were produced by TBW and are incorporated by reference through the opening paragraph of the ISDA Master Agreement. These documents are referred to in the Memorandum as “**Exhibit M.**” (Exhibits M and N are cumulatively referred to as the “**front swaps.**” Exhibits M and O are cumulatively referred to as the “**DB Swap Documents.**”) Such “Interest Rate Swap[]” documents are among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 16. These documents relate to the references in Deutsche’s Complaint to “Swap Agreements” and, in particular, its status as “Front Swap Counterparty.” *See, e.g.*, DB Compl. ¶¶ 36, 41, 42(c), 67. Deutsche relies on its status as a “Swap Counterparty” in bringing its breach of contract claim under the Custodial Agreement, *see* DB Compl. ¶ 150; Exhibit D § 25, as well as its indemnification claim under the Custodial Agreement, *see* DB Compl. ¶ 158; Exhibit D § 17.

15. Front Swap (BNP). Attached hereto as **Exhibit N** are true and correct copies of documents produced by TBW entitled, respectively: (1) Second Amended and Restated Schedule to the Master Agreement dated as of June 30, 2008, between BNP Paribas and Ocala Funding, LLC; and (2) Second Amended and Restated Confirmation, dated June 30, 2008, to Ocala Funding, LLC from BNP Paribas. These documents are referred to in the Memorandum as “**Exhibit N.**” (Exhibits M and N are cumulatively referred to as the “**front swaps.**” Exhibits N and P are cumulatively referred to as the “**BNP Swap Documents.**”) Such “Interest Rate Swap[]” documents are among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 16. BNP relies on its status as a “Swap Counterparty” in bringing its indemnification

claim under the Custodial Agreement. See BNP Compl. ¶ 131; Exhibit D § 17. BNP also makes explicit reference to the swap transactions in its Complaint. See BNP Compl. ¶ 36.

16. Back Swap (Deutsche). Attached hereto as **Exhibit O** is a true and correct copy of a document produced by TBW entitled Confirmation for U.S. Dollar Rate Swap Transaction under 1992 Master Agreement, dated June 30, 2008, from Deutsche Bank, AG, London Branch to Taylor, Bean & Whitaker Mortgage Corp. This document is referred to in the Memorandum as “**Exhibit O.**” (Exhibits O and P are cumulatively referred to as the “**back swaps.**” Exhibits M and O are cumulatively referred to as the “**DB Swap Documents.**”) This document relates to the references in Deutsche’s Complaint to “Swap Agreements” and, in particular, its status as “Back Swap Counterparty.” See, e.g., DB Compl. ¶¶ 36, 41, 43(c), 67. Deutsche relies on its status as a “Swap Counterparty” in bringing its breach of contract claim under the Custodial Agreement, see DB Compl. ¶ 150; Exhibit D § 25, as well as its indemnification claim under the Custodial Agreement, see DB Compl. ¶¶ 158; Exhibit D § 17.

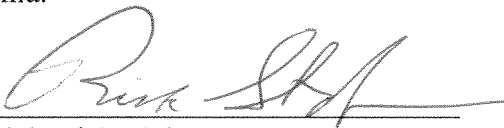
17. Back Swap (BNP). Attached hereto as **Exhibit P** are true and correct copies of documents produced by TBW entitled, respectively: **(1)** Second Amended and Restated Schedule to the Master Agreement dated as of March 27, 2006, between BNP Paribas and Taylor, Bean & Whitaker Mortgage Corp.; **(2)** Second Amended and Restated Confirmation for U.S. Dollar Rate Swap Transaction under 1992 Master Agreement, dated June 30, 2008, from BNP Paribas to Taylor, Bean & Whitaker Mortgage Corp.; and **(3)** Second Amended and Restated Credit Support Annex between BNP Paribas and Taylor, Bean & Whitaker Mortgage Corp. These documents are referred to in the Memorandum as “**Exhibit P.**” (Exhibits O and P are cumulatively referred to as the “**back swaps.**” Exhibits N and P are cumulatively referred to as the “**BNP Swap Documents.**”) BNP relies on its status as a “Swap Counterparty” in bringing its indemnification claim under the Custodial Agreement. See BNP Compl. ¶ 131; Exhibit D § 17.

BNP also makes explicit reference to the swap transactions in its Complaint. *See* BNP Compl. ¶ 36.

18. LLC Agreement. Attached hereto as **Exhibit Q** is a true and correct copy of a document produced by TBW entitled Second Amended and Restated LLC Agreement, dated June 30, 2008, between Ocala Funding, LLC, as Issuer; Taylor, Bean & Whitaker Mortgage Corp., as Manager and Member; and Colleen A. Devries, as Special Member. This document is referred to in the Memorandum as the “**LLC Agreement**” or “**Exhibit Q.**” This agreement is among the governing documents for the Ocala Funding facility which are encompassed within the definition of “Facility Documents,” *see* Indenture, Schedule I, at pp. 12-13, 17. The LLC Agreement, among other things, appoints TBW “Manager” of Ocala Funding, LLC. Exhibit Q § 4.1(a).

19. Moody’s Report. Attached hereto as **Exhibit R** is a true and correct copy of a document entitled Moody’s Investors Service ABCP Program Review of Ocala Funding, LLC, dated July 13, 2009. This document is referred to in the Memorandum as the “**Moody’s ABCP Market Review**” or “**Exhibit R.**” Portions of this document are quoted in the Complaints. *See* DB Compl. ¶ 12; BNP Compl. ¶ 27.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of February, 2010, in Los Angeles, California.


Richard St. John